



August 6, 2019

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

**Re: *Ex Parte* Communication: WC Docket No. 10-90**

Dear Ms. Dortch:

On August 2, 2019, the undersigned of ITTA met with Suzanne Yelen of the Wireline Competition Bureau (Bureau) regarding the *Order* in the above-referenced proceeding, as well as the pending petitions for reconsideration and applications for review of it, and responsive pleadings thereto.<sup>1</sup> Also participating by telephone were Ian Forbes and Stephen Wang of the Bureau, Ken Pfister and Dave Junker of Great Plains Communications, Tom Freeberg, Tiffany Smink, and Jamal Boudhaouia of CenturyLink, Ann Morrison of Consolidated Communications, and Sara Cole of TDS Telecom.

The main thrust of the meeting was to engage Bureau staff in discussion regarding contemplated implementation specifics for the broadband performance measurements testing regime at issue in this proceeding. One critical but heretofore unaddressed set of implementation procedures involves the random selection of test subjects.<sup>2</sup> We urged the Commission to afford providers maximum flexibility to use randomization tools and conventions to generate their own lists of test samples subject to submitting a description of these tools and conventions to Commission staff, and we expressed apprehension regarding the delays and costs associated with having to work with selected test subjects who have modems incompatible with testing systems to replace such modems.<sup>3</sup>

---

<sup>1</sup> See *Connect America Fund*, Order, 33 FCC Rcd 6509 (WCB/WTB/OET 2018) (*Order*); see also, e.g., Comments of ITTA – The Voice of America’s Broadband Providers, WC Docket No. 10-90 (Nov. 7, 2018) (ITTA Comments); Petition of USTelecom – The Broadband Association, ITTA – The Voice of America’s Broadband Providers, and the Wireless Internet Service Providers Association for Reconsideration and Clarification, WC Docket No. 10-90 (Sept. 19, 2018); Reply of USTelecom, ITTA, and WISPA to Opposition to Petition for Reconsideration and Clarification, WC Docket No. 10-90 (Nov. 19, 2018).

<sup>2</sup> See *Order*, 33 FCC Rcd at 6524, para. 40.

<sup>3</sup> It is likely that many such interactions will result in customers refusing the new modem. Modem replacements require changes in set-up (e.g., passwords, device names) of the various devices in the home that rely on the modem. On top of that inconvenience, appointments may entail several contact attempts to arrange, and often require that a customer take time off from work to be home for the appointment. Although the *Order* does allow carriers to use inducements to encourage subscribers to participate in testing, see *id.*, testing costs will be driven up by the *Order*’s commensurate requirement that carriers offer the same inducements to all randomly-selected subscribers in the areas

Of utmost concern is the prospect of having to temporarily upgrade speeds of test subjects who choose to subscribe to advertised speeds lower than those which the carrier was required to deploy. ITTA and others already have advanced numerous arguments for why such a requirement would be burdensome to carriers, confusing for customers, and should be set aside.<sup>4</sup> These arguments were premised upon a reading of the *Order* that such a requirement would only apply where an insufficient number of customers subscribe to a service level that must be tested.<sup>5</sup> This potential requirement is even more troublesome where there are other subscribers who subscribe to the service level to be tested, who just happen to have not been captured in the randomly selected test sample. In such cases, there can be no legitimate justification for forcing carriers to temporarily upgrade speeds for some customers when it has other customers purchasing service at the level to be tested who could be added to the test sample instead. As ITTA advocated previously, rather than wreaking havoc with carrier operations and customer relations, if the Commission is concerned that a test sample of customers actually subscribing to CAF-required speeds does not sufficiently cover the geographic breadth of a carrier's deployment obligations at such speeds, it should specifically establish a low waiver threshold for carriers to demonstrate that they have deployed service in accordance with their buildout requirements in any applicable areas lacking test subjects.<sup>6</sup>

Please do not hesitate to contact the undersigned with any questions regarding this submission.

Respectfully submitted,

/s/

Michael J. Jacobs  
Vice President, Regulatory Affairs

cc: Suzanne Yelen  
Ian Forbes  
Stephen Wang

(Continued from previous page) \_\_\_\_\_  
where inducements are offered to any. *See id.*; *but see id.* at 6513, para. 10 (seeking to ensure that testing is cost-effective).

<sup>4</sup> *See* ITTA Comments at 8 (citing Application for Review and Request for Clarification of NTCA-The Rural Broadband Association, WC Docket No. 10-90, at 18 (filed Sept. 19, 2018)); Letter from Michael J. Jacobs, Vice President, Regulatory Affairs, ITTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 3 (filed Feb. 11, 2019) (ITTA February 11 *Ex Parte*).

<sup>5</sup> *See, e.g.*, ITTA Comments at 8; *see also Order*, 33 FCC Rcd at 6528, para. 51 (“carriers that have deployed a network with the requisite speeds must include all subscribers at that level in their testing, but may still find it necessary to upgrade individual subscriber locations, at least temporarily, to conduct speed testing”, and illustrating with situation where only 5 subscribers take service at the requisite speeds but 50 are required to be tested).

<sup>6</sup> *See* ITTA February 11 *Ex Parte* at 3.